

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(f) In lieu of the inspection frequency established in paragraph (c) of this section, the office shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar-year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the office shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (f)(2) of this section. Following the inspection and public notice, the office shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (e) of this section and thereby qualifies for a reduction inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (f)(1) of this section shall be provided as follows:

(i) The office shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35635, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983; 53 FR 24882, June 30, 1988; 53 FR 26744, July 14, 1988; 59 FR 60884, Nov. 28, 1994; 75 FR 60276, Sept. 29, 2010]

§ 842.12 Requests for Federal inspections.

(a) A person may request a Federal inspection under § 842.11(b) by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in § 842.11(b)(1)(i) exists and that the State regulatory authority, if any, has been notified, in

writing, of the existence of the violation, condition or practice. The statement shall set forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law.

(c) If a Federal inspection is conducted as a result of information provided to the Office by a person as described in paragraph (a) of this section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within ten days of the Federal inspection or, if there is no Federal inspection, within 15 days of receipt of the person's written statement, the Office shall send the person the following.

(1) If a Federal inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the Office under § 842.15.

(e) The Office shall give copies of all materials in paragraphs (d)(1) and (d)(2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under paragraph (b) of this section.

§ 842.13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under § 842.11:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of exploration or operation required under the applicable program; and,

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section, except that a search warrant may be required for entry into a building.

§ 842.14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director or his or her designee in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director or his or her designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director or his or her designee shall furnish the complainant